

Amendments to the Drawings

The attached sheet of drawings includes changes to Figure 2B. This sheet, which includes Figure 2B, replaces the original sheet including Figure 2B. In Figure 2B, the previously miss-numbered operating system 72 is now corrected labeled as operating system 69.

REMARKS

This is a response to the non-final Office Action of January 25, 2006. Upon entry of this response, claims 1, 3-6, 10, 11, 13-15, 18, 21, 23-25, 28, 31, 33-35, 38 and 39 are amended as indicated. Claims 1-40 remain pending in the application.

The Office Action has indicated the specification, drawings and claims 1-40 are objected to for informalities. The Office Action has further indicates that claims 11-40 are rejected under 35 USC 101, claims 5, 6, 15, 16, 25 and 35 under rejected 35 USC 112 (1st), claims 3, 10, 18 and 21-40 under rejected 35 USC 112 (2nd), claims 1, 2, 7-12, 15, 17-22, 25-32, 35 and 37-40 are rejected 35 USC 102 (b) and claims 3-6, 13, 14, 16, 23, 24, 33, 34 and 36 are rejected under 35 U.S.C. §103(a).

Objection to the Specification and Drawings

In response to the Office Action's finding that there are informalities in the specification and drawings, Applicants are amending three paragraphs and one Figure 2B indicated above. The Applicants believe that the amendments address the concerns of the Examiner.

Objection to the Claims

The Applicant has amended claims 1, 3, 4, 11, 13, 14, 21, 23, 24, 31, 33, 34 and 39, in response to the Examiner's objection to the claims, in Paragraph 5 of the Office Action, because of a minor informalities. The Applicants believe that the amendments to the claims address the concerns of the Examiner.

Rejections Under 35 U.S.C. §101

The Office Action rejects claims, 11-40 being directed to non-statutory subject matter. In particular, claims 11-20 were rejected because the Office Action contends that the module

elements of the device were interpreted as software, such that the elements of the device did not support it being hardware. Claims 21-30 were rejected because the Office Action alleges there is evidence that Applicant's intent to cover non-functional descriptive material. Claims 31-40 were rejected because Office Action alleges that logic elements to be reasonably interpreted as software such that the elements of the device do not supported being hardware.

The Applicants respectfully disagree. In particular, the Applicants assert that the specification and claims explicitly show the implied performance of the claimed modules and logic as being parts of a computer device (see Page 25). Therefore, Applicants believe it would be apparent to one skilled in the art that the modules and logic of the present invention would be implemented on a computer system.

The Applicants assert that claims 11, 21 and 31, include *a set of settings characteristic that is computed by determining the computer device operation and therefore, using the correct set of settings (i.e. profile data) to perform the operation on the computer.* This language is supported in the original specification on page 14, line 11 to page 17, line 11.

Applicant further contends that the *determining the computer device operation and therefore, using the correct set of settings (i.e. profile data) to perform the operation on the computer* provides a pre-computer process activity that places the claims into a “safe harbor” under Section IV. B.2(b)(I) under the *Examination Guidelines for Computer Related Inventions* (Final version 1996). Therefore, Applicant contends that the amendments to claims 11, 21 and 31, discussed above address the concerns of the Examiner, and now clearly satisfy the statutory requirements of 35 U.S.C. §101.

Rejections Under 35 U.S.C. §112

The Office Action rejects claims 5, 6, 15, 16, 25 and 35 under rejected 35 USC 112 (1st),

for including subject matter which is not described in the specification in a way to reasonably convey that the inventors that have possession of the claimed invention. While the Applicants respectfully disagree, claims 5, 15, 25 and 35 had been amended to clarify the subject matter of the claims.

Claims 3, 10, 18 and 21-40 under rejected 35 USC 112 (2nd) for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, claim 3 was rejected because the references to "set of settings", was allegedly confusing as to exactly which "set of settings ". The Applicants believe the amendments to claim 3, 13, 23 and 33 resolve this issue. The Applicants have amended claims can come 18, 28 and 38 to move the references to trademark and trade names.

The Applicant believes that the amendments to claims 3, 5, 6, 10, 15, 16, 18, and 21-40, discussed above, address the concerns of the Examiner, and now clearly satisfy the statutory requirements of 35 U.S.C. §112.

Rejections Under 35 U.S.C. §102(b)

Claims 1, 2, 7-12, 15, 17-22, 25-32, 35 and 37-40 stand rejected under 35 U.S.C. 102(b) as being anticipated by *Zancho et al.* (5,633,484). The Applicants respectfully request that the amendment being filed herewith be entered.

With respect to amended independent claims 1, 11, 21 and 31

With regard to the rejected independent claims 1, 11, 21 and 31, the Applicants respectfully traverse the Office Action position that *Zancho et al.* renders the claimed invention anticipated. Applicants respectfully disagree and offer the following comments and declaration for consideration.

First, Applicants respectfully disagreed with the Office Action contention that *Zancho et*

al. suggests a method and system for determining a set of settings used in an operation on a computer device as claimed. Applicants agree that *Zancho et al.* teaches a personal attribute selection and management system (Title). However, Applicants disagree that *Zancho et al.* suggests a system or method for determining a set of settings used in an operation on a computer device as now claimed. In fact, Applicants concede that *Zancho et al.* suggests providing specific application settings (column 9 lines 30-33), but not general operations settings as claimed.

Moreover, Applicants assert that *Zancho et al.* suggests the settings are for access to character with regard to environmental and human senses preferences, and not the actual operation of the computer in the way that it process applications and data as claim (column 6, line 49- column 7, line 59).

For all of these reasons, the Applicant respectfully submits that these aspects of the present invention, as recited in claims 1, 11, 21 and 31, clearly are neither taught nor suggested by the prior art of record as required by *In re Royka*, 490 F.2d 981,180 USPQ 580 (CCPA 1974). Therefore, Applicants respectfully request that this rejection be withdrawn.

With respect to dependent claims 2-10, 12-20, 22-30 and 32-40

Claims 2-10, 12-20, 22-30 and 32-40 are dependent upon claims 1, 11, 21 and 31, which are believed to be allowable over the prior art made of record. Therefore, these claims are allowable as a matter of law. *In re Fine*, 837 F.2d 1071 (Fed. Cir. 1988).

Therefore, Applicants respectfully request that theses rejections be withdrawn.

Rejections Under 35 U.S.C. §103(a)

Claims 3-6, 13, 14, 16, 23, 24, 33, 34 and 36 stand rejected under 35 U.S.C. 103(a) as being unpatentable over *Zancho et al.* (5,633,484). The Applicants respectfully request that the amendment being filed herewith be entered.

With respect to claims 3, 13, 23, and 33, Applicants respectfully traverse that *Zancho et al.* teaches were suggests creating new sets of settings in a database by selecting existing set of setting up being it to a new location for a new set of setting's end and modifying the new set of settings in its location, as now claimed. The Office Action readily admits that *Zancho et al.* does not expressly teach copying the data. However the Office Action contends that copying data in the databases conventional. While copying data in the database may be conventional, there is no teaching or suggestion anywhere in any of the references of creating new set of settings by copying existing set of settings to a new location and then modifying them. In fact, Applicants can find no such teaching or even a suggestion to support the rejection of this claim. "The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." *In re Fritch*, 972 F.2d 1260, 1266, 23 U.S.P.Q.2d 1780 (Fed Cir. 1992).

With respect to claims 4, 14, 24 and 34, Applicants respectfully traverse that *Zancho et al.* teaches determining a second set of settings from a setting in the set of settings and acquiring the second set of settings to perform the operation on the device, as now claimed. The Office Action readily admits that *Zancho et al.* does not expressly teach indicating a second set of settings from a first set of settings and then acquiring the second set of settings for operating pewter device. The Office Action tries to rectify this deficiency by this applying the disclosure of *Zancho et al.* to meet the limitations expressed in these claims. In fact, Applicants can find no such teaching or even a suggestion to support the rejection of this claim. *In re Fritch*.

With respect to claims 6, 16, 26 and 36, Applicants respectfully traverse that *Zancho et al.* teaches ordering the multiple sets of settings by priority, as now claimed. The Office Action readily admits that *Zancho et al.* does not expressly teach ordering the multiple sets of settings by priority. The Office Action tries to rectify this deficiency by this applying the disclosure of *Zancho et al.* to meet the limitations expressed in these claims. In fact, Applicants can find no

such teaching or even a suggestion to support the rejection of this claim. In re Fritch.

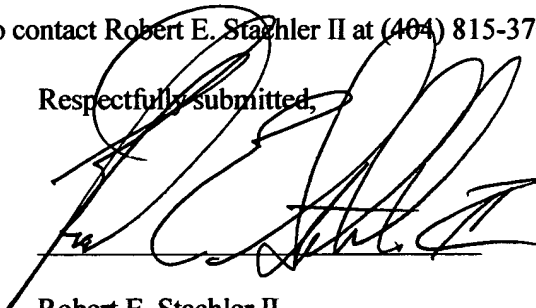
Other References Cited in the Action

In addition to the references applied in the Office Action, it is respectfully submitted that Applicant's invention, as now recited in claims 1-40 is neither anticipated nor rendered obvious by any of the other references cited in the Office Action, either taken alone or in combination.

CONCLUSION

In view of all of the foregoing, the Applicants respectfully submit that claims 1-40 are in condition for allowance and such action by the Examiner is earnestly solicited. If the Examiner has any questions, the Examiner is requested to contact Robert E. Stachler II at (404) 815-3708.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. E. Stachler II', is written over a horizontal line.

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Attachment: Replacement Sheet
Annotated Sheet Showing Changes

FIG. 2B

15, 17, 18
AND 19

